

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY HICKMAN-SMITH,

Defendant.

8:14CR367

ORDER

This matter is before the Court on the defendant's motion for sentence reduction (Filing No. 119).

In 2010, Congress enacted the Fair Sentencing Act, [Pub. L. No. 111-220](#), 124 Stat. 2372 (2010), effective August 3, 2010, which reduced the disparity between crack and powder cocaine in sentencing by increasing the threshold amounts required to trigger mandatory minimum sentences for crack cocaine offense. To trigger a mandatory minimum sentence of ten years, an offense must involve more than 280 grams of crack cocaine, rather than the prior standard of more than 500 grams. See 21 U.S.C. § 841(b)(1)(A)(2010). Congress failed to give the Fair Sentencing Act retroactive effect. See [United States v. Orr](#), 636 F.3d 944, 958 (8th Cir. 2011). The First Step Act, [Pub. L. No. 115-391](#), 132 Stat. 5194 (2018), at § 404, permits but does not require, sentencing judges to apply the Fair Sentencing Act to sentences imposed prior to August 3, 2010. See [United States v. Nance](#), No. 8:08CR449, 2019 WL 2436210, at *1 (D. Neb. June 10, 2019).

The record shows Hickman-Smith was sentenced on August 7, 2015, for possession with intent to distribute more than 280 grams of crack cocaine. Accordingly,

Hickman-Smith has already received the benefit of the reduced penalty and no further benefit is available. Defendant's motion for sentence reduction (Filing No. 119) is denied.

Dated this 20th day of June, 2019.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge